

March 9, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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DECISION ON REQUESTS FOR RECONSIDERATION OR CLARIFICATION

SUBJECT: Department of Development and Environmental Services File No. **L97VA003**

EUGENE MOREL
Zoning Variance Decision Appeal

Location: 2931 East Lake Sammamish Parkway SE

Property Eugene Morel
Owner: 6232 - 146th Street SW
Edmonds, WA 98026

Applicant/ Eugene Morel, *represented by*
Appellant: Joel Haggard, Attorney At Law
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Seattle, WA 98101
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REQUESTS

1. **Appellant's Request For Reconsideration.** On February 4, 1999, the Examiner issued his Decision on an Appeal from Zoning Variance Decision regarding the variance application of Eugene Morel. The following day, through his attorney, Mr. Morel requested reconsideration and clarification of that decision. Particularly, Appellant Morel addresses the following concerns:

- A. Appellant Morel states that he did *not* oppose obtaining a special use permit from the King County Parks Department, as suggested by paragraph 3.c on page 3 of the Examiner's Report and Decision.
- B. Condition No. 1 on page 7 of the Examiner's Decision imposes a five-foot setback from the entire east property line. Appellant Morel opposes that requirement and asks for reconsideration.

On February 10, 1999 the Applicant filed a second request for reconsideration adding the following concerns:

- C. Appellant Morel also opposes the five-foot setback requirement stated in condition 1 of the Examiner's February 4, 1999 Decision as it applies to the "workshop area" to be located north of the proposed garage.

In summary, the Appellant asks for these structural setbacks from the east property boundary: five feet for the two-car garage area; and, three-and-one-half feet for the workshop area proposed to be located north of the two car garage area.

2. **Appellant's Request For Clarification: Special Use Permit Requirement.** The hearing record supports Appellant Morel's position. Mr. Morel did not object to or oppose obtaining a special use permit from the King County Parks Department.

3. **Department of Parks And Recreation's Request For Reconsideration.** Condition Nos. 2.A and 2.B require a hammerhead turnaround and protective bollard installation prior to occupancy inspection. These safety enhancements would necessarily be located upon and within the East Lake Sammamish (former BNR) recreation corridor. For this reason, the Parks Department apparently believes there may be some conflict with its authority for administering Applicant Morel's special use permit to obtain residential access across that corridor.

FINDINGS AND CONCLUSIONS

1. **Reconsideration: Setback Requirement:** The Examiner's February 4, 1999 Decision is hereby revised as indicated in this February 19, 1999 reconsideration decision, for the following reasons:

- A. There is some confusion regarding an appeal from an administrative decision in a *de novo* hearing. Specifically, it has not been made clear through this appeal review whether DDES actions that were not appealed in its variance decision were subject to review in a *de novo* proceeding. An *open hearing* could warrant an *open book* review of the entire application. Because of the complex interweaving and interdependency of the facts and circumstances at issue in a variance case such as this, one could easily justify such a course. The problem in this case is that the Examiner did not make clear his position on this matter, thereby leaving the parties uninformed as to the full burden of the Appellant. Indeed, if the Appellant had been given the opportunity, he might well have persuaded the Examiner to another point of view.
- B. The five-foot setback required in the Examiner's February 4, 1999 decision was more stringent than the original variance decision entered by the Department of Development and Environmental Services. The Department, in its decision, entered findings and conclusions that supported its more lenient setback requirement. The record contains no evidence or argument to contradict the Department's findings and conclusions in that regard.

2. **Reconsideration: Special Use Permit Requirement.** Condition No. 4 of the Examiner's February 4, 1999 Decision requires a special use permit to be issued by the Parks Department. It acknowledges the Parks Department's full authority to administer such permits:

Before building permit issuance, the Applicant shall obtain a special use permit (KCC 14.03) from the King County Department of Parks and Recreation for abutting King County owned property.

As the Applicant responds, this condition No. 4 is, “consistent with law (i.e., the Examiner cannot void permits otherwise required) and past practice (i.e., decision often conditioned on receiving other permits required by law).”

In addition, condition No. 3 of the Examiner’s February 4, 1999 Decision states (in part):

Approval of this variance does not authorize any alteration or improvement of abutting King County owned property.

It is unclear whether the Parks Department has not noticed or disregarded condition Nos. 3 and 4. Neither the Parks Department nor any other hearing participant has indicated how condition Nos. 3 and 4 might fail to acknowledge the Parks Department’s authority to administer the special use permit in the public interest. Thus, the Examiner is left with the same question raised by the Applicant (“Frankly, we are not sure what the Knauer [Parks Department] request asks.”).

The Parks Department’s concern, however, raises a possible hardship not for the Parks Department, but for the Applicant. If, in exercising its authority, the Parks Department denied the hammerhead turn-around or bollard installation that I have deemed necessary based on traffic engineering testimony, then the Applicant would need to start all over again with a new site plan and variance application. To avoid that conceivable complicating hardship upon the Applicant, Decision conditions 2.A and 2.B are revised as indicated below.

3. **Erratum.** Finally, this reconsideration review has allowed the Examiner to discover that condition No. 4 contains a missing word (“crossing”) which has been properly inserted in the revised condition No. 4 stated in the Reconsidered Decision below.

4. **Findings Adopted.** Except as modified above, the findings contained in the Examiner's February 4, 1999 Decision on this matter are adopted and incorporated here.

5. **Conclusions Adopted.** Except as modified above, the conclusions contained in the Examiner's February 4, 1999 Decision are adopted and incorporated here.

RECONSIDERED DECISION

The variance from the setback standards of the R4P zone classification requested by Gene Morel is APPROVED; SUBJECT to the following conditions:

1. The minimum setback from the east property line shall be as follows:

A. For the garage, five feet.

B. For the workshop area located north of the two-car garage, three-and-one-half feet.

- C. For the residence portion of the building located south of the two-car garage area, two-and-one-half feet.
- 2A. A hammer-head turnaround, or equivalent public safety measure as approved by Parks Department and a KCDOT traffic engineer pursuant to special use permit review, shall be installed as indicated in attachment C. of the Examiner's February 4, 1999 Decision, before occupancy inspection.
- 2B. Bollards, or an equivalent public safety measure as approved by the Parks Department and a KCDOT traffic engineer pursuant to special use permit review, shall be installed as indicated in attachment D. of the Examiner's February 4, 1999 Decision, before occupancy inspection.
- 2C. A covenant which prohibits parking or outdoor storage within the hammer-head area shall be recorded before building permit issuance.
3. Approval of this variance does not authorize any alteration or improvement of abutting King County owned property. See also condition No. 4, following.
4. Before building permit issuance, the Applicant shall obtain a special use permit (KCC 14.03) from the King County Department of Parks and Recreation for crossing abutting King County owned property.
5. An automatic garage door opener shall be installed on the proposed garage door before final occupancy inspection.
6. The development of this project is subject to all rules, regulations, policies and codes that are not specifically modified by this approval.
7. There shall be no subsequent modification of structural location following decision or settlement of any litigation regarding disputed boundaries between Applicant Morel and King County.

ORDERED this 9th day of March, 1999.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 9th day of March, 1999, to the following parties and interested persons:

Daryl Deutsch	Steve Negri	Tracy Daniels
Gene Duvernoy	Kim Schademan	David Eldred
Terry Gibson	Richard Schroeder	Jennifer Knauer
Joel Haggard	Charlene Tagas	Aileen McManus
Patrick Lathrop	Fred Wert	Sherie Sabour
Eugene Morel	Greg Borba	Michael Salmon

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding appeals from decisions on applications for variance. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of this reconsidered Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)